

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

DELDRIK D. BENSON, #2005414

§

v.

§

CIVIL ACTION NO. 6:17cv50

RONNIE MCKINNEY, ET AL.

§

MEMORANDUM OPINION ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

Plaintiff Deldrick D. Benson, (Benson), proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 alleging purported violations of his constitutional rights. The complaint was referred for findings of fact, conclusions of law, and recommendations for the disposition of the case.

After reviewing Defendants' motion for summary judgment based on Benson's failure to exhaust his administrative remedies at the Gregg County Jail, (Dkt. #26), the Magistrate Judge issued a Report recommending that the Defendants' motion be granted and that Benson's claims against them be dismissed with prejudice. (Dkt. #31). The Court notes that the scheduling order, (Dkt. #16), explained to Benson that a response to any motion for summary judgment "shall be due no later than 80 days following the filing of the answer or twenty days after the filing of the motion for summary judgment limited to the defense of exhaustion of administrative remedies, whichever is earlier." Benson failed to respond to the motion.

A copy of the Report and Recommendation was sent to Benson at his address, return receipt requested. The docket demonstrates that Benson received the Report on or before January 29, 2018, (Dkt. #32). However, no objections have been filed to date.

Benson is therefore barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly it is

ORDERED that the Report of the Magistrate Judge, (Dkt. #31) is **ADOPTED** as the opinion of the Court. Moreover, it is

ORDERED that the Defendants' motion for summary judgment, (Dkt. #26), is **GRANTED**. Further, it is

ORDERED that the above-styled civil rights lawsuit is **DISMISSED** with prejudice. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So Ordered and Signed

Mar 9, 2018



Ron Clark, United States District Judge